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No. 94-1295

In the Supreme Court of the United States

OCTOBER TERM, 1994

DONALD J. BLANDFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the jury was properly instructed on the charge of extortion under color of official right (18 U.S.C. 1951).

2. Whether the evidence was sufficient to support petitioner's RICO conviction for participating in the conduct of the affairs of an "enterprise" through "a pattern of racketeering activity" (18 U.S.C. 1962(c)).

3. Whether the sentencing court committed plain error by imposing a costs-of-incarceration fine under Sentencing Guidelines § 5E1.2(i).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-65a) is reported at 33 F.3d 685.

JURISDICTION

The judgment of the court of appeals was entered on September 7, 1994, and a petition for rehearing was denied on December 1, 1994. Pet. App. 1b-2b. The petition for a writ of certiorari was filed on January 31, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Kentucky, petitioner was convicted of extortion, in violation of the Hobbs Act, 18 U.S.C. 1951; of participating in the conduct of an enterprise through a pattern of racketeering activity, in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1962(c); and of making false statements to a federal agency, in violation of 18 U.S.C. 1001. The district court sentenced petitioner to a 64-month prison term, to be followed by two years' supervised release. Pet. App. 13a. The court of appeals affirmed. *Id.* at 1a-65a.

1. Petitioner is the former Speaker of the Kentucky House of Representatives. The trial evidence showed that petitioner received three separate cash payments of $500 each within a three-month period from William McBee, a lobbyist for Kentucky harness racing interests. The trial evidence also showed that petitioner used campaign funds to provide his girlfriend with the down payment for a car and that he falsely described a related payment in a campaign finance report filed through the United States mail. Pet. App. 2a-13a.

Petitioner received the first $500 cash payment from McBee in January 1992 while in Florida on an interest-group financed trip. McBee had been hired as a lobbyist by Riverside Downs, a harness racing track in Henderson, Kentucky. Riverside, like other harness tracks, was concerned about possible enactment of "breed-to-breed" legislation that would have restricted the simulcasting of races to tracks that race similar breeds of horses. Riverside was

cooperating in an FBI undercover investigation, dubbed Operation BOPTROT, of Kentucky legislators suspected of extorting cash payments in return for taking a position on racing legislation. Although Riverside officials were informed of the undercover investigation, McBee was not. When McBee provided petitioner with the first $500 cash payment on behalf of Riverside, he described it as "walking around" money and did not mention the breed-to-breed legislation. McBee later testified at trial, however, that petitioner had accepted money from him on at least one prior occasion knowing that it was intended to influence his position on pending horse racing legislation. Pet. App. 2a-6a.

Petitioner received the second $500 cash payment on February 20, 1992, in a bedroom of a hotel suite rented by "Jay" Spurrier, a Riverside Downs lobbyist who by then was cooperating in the FBI undercover investigation. The transaction was recorded by an audio reception device hidden in the bedroom. McBee again failed to mention the breed-to-breed legislation, but he did make clear that the cash was "a little something from Mr. Spurrier and me and the harness horse people and . . . so forth." Pet. App. 6a. Petitioner replied: "All right. Well that's wonderful!" *Ibid.*

Petitioner received the third $500 cash payment on March 11, 1992, again in Spurrier's hotel suite. The Kentucky governor's proposed horse racing legislation had been submitted to a legislative committee on March 2, 1992, but could have been amended as late as March 23, 1992 to include a breed-to-breed restriction. Pet. App. 6a-7a. This time, the FBI captured the payment and related discussions on both video and audio tape. McBee told petitioner he had

"[a]nother five" from the "[h]arness people"; he told petitioner that "your governor's taking care of the bill" and added, with reference to the cash, that "[w]hen I get it, I share!" Pet. App. 7a. Petitioner replied, "bless your heart." *Ibid.* McBee then said: "No breed to breed. Ain't in there." *Id.* at 8a. After further discussion regarding the horse bill, McBee repeated his "no breed to breed" point, and petitioner responded: "Yeah. Okay. All right. Thanks." *Ibid.* Later that same evening, Spurrier expressed his gratitude at length to petitioner on behalf of "the harness people" with respect to the "breed to breed problem." *Id.* at 9a.

The evidence also showed that petitioner filed at least one false campaign finance statement through the United States mail. Buel Guy, petitioner's chief administrative assistant from 1984 until 1992, testified that in 1986 petitioner loaned $3500 from his campaign account to Patricia Foley, his then-secretary and girlfriend, to be used as down payment on a car. Petitioner funneled the money to Foley by writing Guy a campaign account check, which Guy cashed and returned to petitioner. The check was reported to the Kentucky Registry of Election Finance and the local clerk in petitioner's county of residence as reimbursement to Guy for campaign work. To allay Guy's concern that he might have to pay taxes on the $3500, petitioner issued Guy another campaign check, this time for $1018.50, which again was listed as reimbursement for a campaign expense. The report describing that payment was filed on January 4, 1988, through the United States mail. Pet. App. 11a-13a.

On March 31, 1992, the undercover phase of Operation BOPTROT ceased, and FBI agents went to

petitioner's office in Frankfort, Kentucky, to question him about payments he received from McBee. During a consensually recorded conversation, petitioner repeatedly denied having received money on any occasion from McBee. These false statements gave rise to petitioner's conviction under 18 U.S.C. 1001. Pet. App. 11a, 13a; Gov't C.A. Br. 9-10.

2. The court of appeals affirmed. Pet. App. 1a-65a.

a. The court of appeals held that the district court properly instructed the jury regarding the Hobbs Act offense of extortion "under color of official right" (18 U.S.C. 1951). Pet. App. 14a-28a. The court first rejected petitioner's claim that the instructions erroneously failed to "require the jury to find that [petitioner] had entered into an explicit agreement (or *quid pro quo*) with Riverside Downs to oppose breed-to-breed legislation." *Id.* at 14a. After thoroughly analyzing this Court's opinions in *Evans* v. *United States*, 112 S. Ct. 1881 (1992), and *McCormick* v. *United States*, 500 U.S. 257 (1991), the court of appeals found it significant that those cases, unlike this one, involved campaign contributions. See Pet. App. 15a-23a. The court of appeals was "[un]certain whether the Supreme Court would have courts apply a different standard when a public official's acceptance of payments that are concededly not campaign contributions forms the basis for that official's extortion charge," *id.* at 23a, but the court thought "a strong argument could be advanced for treating campaign contribution cases and non-campaign contribution cases disparately" because "where, as in this case, a public official's primary justification for receiving, with relative impunity, cash payments from private sources, *i.e.*, our present campaign financing system, is not available, that public official

is left with few other means of rationalizing his actions." *Id.* at 23a-24a.

The court of appeals, however, ultimately found it unnecessary to determine the precise contours of any quid pro quo requirement outside the campaign contribution context because the district court, "[a]pparently operating under the mistaken assumption that *Evans* controlled the case at bar, * * * issued an instruction that tracked the relevant portion of the holding in *Evans*, quoting directly therefrom." Pet. App. 25a. The court emphasized the district court's instructions, which stated that: "A public official commits extortion when he obtains a payment to which he was not entitled, knowing that the payment was made in return for his official acts"; and "[To find petitioner guilty, the government must prove he] intended to obtain property or a payment to which he was not entitled with the knowledge that the property or payment was being given in return for an official act or an exercise of his official authority in regard to legislation potentially including Breed to Breed provisions." *Id.* at 26a (emphasis omitted). The court concluded that "this instruction, far from prejudicing [petitioner], actually inured to his benefit" by effectively requiring that "the government prove a campaign contribution case even though no campaign contributions had in fact been made." *Ibid.*

Judge Nelson concurred in the judgment but wrote separately to express his view that the quid pro quo requirement of *Evans* and *McCormick* was not "limited to cases where all of the questionable funds go into the defendant's campaign coffers and none go into the defendant's own pocket." Pet. App. 58a. Notwithstanding his different view of the import of

Evans and *McCormick*, Judge Nelson concluded that the district court's instructions adequately encompassed the notion of a quid pro quo. See *id.* at 58a-61a. While he believed that it would have been "preferable" to instruct the jury that petitioner must have known the payment was in exchange for a "specific" official act, petitioner had failed to object to the omission of that one word and the omission did not amount to plain error. *Id.* at 59a-60a.

b. The court of appeals affirmed petitioner's RICO conviction. Pet. App. 32a-39a. In convicting petitioner, the jury returned a special verdict indicating it had found that petitioner committed the predicate racketeering acts of (1) extortion (18 U.S.C. 1951) based on the McBee payments, and (2) mail fraud (18 U.S.C. 1341) based on the false campaign report mailed in 1988. Pet. App. 13a, 64a. The court of appeals, with one judge dissenting, held that these two predicate acts constituted the requisite "pattern" of racketeering activity. *Id.* at 35a-39a. The court explained that a RICO pattern requires "not only that at least two predicate acts occurred, but also a 'relationship between the predicates' and the 'threat of continuing activity[.]'" *Id.* at 38a (quoting *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989)). The court found the predicate crimes in this case to be related because "[t]hey had as their purpose the use of public office for personal benefit, and they, in fact, resulted in such benefit." Pet. App. 38a. And, the court found it "beyond peradventure" that these acts posed a threat of continuing activity, particularly given petitioner's trial testimony "that he saw nothing wrong with putting campaign funds to personal use or with

accepting even large amounts of money from lobbyists." *Id.* at 39a.

The court of appeals also found that the government had proved the requisite RICO "enterprise." Pet. App. 36a-37a. The court rejected petitioner's contention that "the 'Office of the Representative for House District 14 together with the individuals employed therein' is not, in fact, an 'enterprise' within the meaning of 18 U.S.C. § 1961(4)." *Id.* at 36a. It explained that, even assuming petitioner "was not in charge of a formal and legally cognizable entity, * * * [u]nder § 1961(4), 'associations in fact' are also deemed enterprises." *Id.* at 37a (citation omitted). The court endorsed the district court's determinations that "[t]he evidence was clear that [petitioner] had several employees in his office who performed constituent service for both his constituents as Speaker of the House and his constituents as Representative of the Fourteenth District" and that "[t]hese employees performed various duties for the office which constituted the enterprise, including some of the racketeering acts." *Ibid.*

c. The court of appeals upheld the judgment imposing upon petitioner a $108,356 fine to cover the expected costs of his incarceration. Pet. App. 55a-57a. The court declined to consider petitioner's challenge to the Sentencing Commission's authority to promulgate the costs-of-incarceration fine guideline (§ 5E1.2(i)) because petitioner "did not * * * challenge the validity of section 5E1.2(i) at sentencing." Pet. App. 56a.

ARGUMENT

1. Petitioner asks (Pet. 12-17) this Court to grant certiorari to consider whether the quid pro quo

requirement recognized in *McCormick* v. *United States*, 500 U.S. 257 (1991), and *Evans* v. *United States*, 112 S. Ct. 1881 (1992), applies outside the campaign contribution context. That question is not squarely presented, however, because the district court, "operating under the * * * assumption that *Evans* controlled the case at bar, * * * issued an instruction that tracked the relevant portion of the holding in *Evans*, quoting directly therefrom." Pet. App. 25a. It is unclear whether a majority of the court below believed the district court was correct in assuming that the quid pro quo requirement should apply to a public official's receipt of cash that concededly cannot be justified as a campaign contribution.[1] The court was not required to resolve that issue in any event, because the district court's instruction effectively required the government to prove the existence of a quid pro quo in order to convict. *Id.* at 26a.

Petitioner takes issue (Pet. 15) with the court of appeals' conclusion that the challenged jury instruction embodied the quid pro quo requirement under *Evans*. The instruction, however, directly tracked this Court's language in *Evans*. Compare *Evans*, 112

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[1] Judge Guy, the author of the majority opinion, viewed *Evans* "as limited to the campaign contribution context" (Pet. App. 23a), and suggested the district court was "mistaken" in assuming otherwise (*id.* at 25a). Judge Nelson, on the other hand, viewed *Evans* as "leav[ing] little room for doubt that the *quid pro quo* requirement of *McCormick* * * * is not limited to [campaign contribution] cases." *Id.* at 58a. The view of the third judge on this point is unclear. See *id.* at 62a (opinion of Quist, J., sitting by designation) ("I concur in all respects except [as to a RICO issue] with the opinion of Judge Guy and the concurring opinion of Judge Nelson.").

S. Ct. at 1889 ("We hold today that the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.") with Pet. App. 26a ("A public official commits extortion when he obtains a payment to which he was not entitled, knowing that the payment was made in return for his official acts."). A Hobbs Act instruction need not, contrary to petitioner's claim (Pet. 15-17), require a jury to find an "explicit" bribe agreement. *Evans* makes clear that the "explicit promise or undertaking by the official to perform or not to perform an official act" referred to in *McCormick*, 500 U.S. at 273, may be proved by evidence that "a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans*, 112 S. Ct. at 1889; see also *id.* at 1892 (Kennedy, J., concurring in part and concurring in the judgment) ("The official and the payor need not state the *quid pro quo* in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods.").

The quid pro quo requirement, assuming it applies in the present context, was conveyed not only by the jury instruction tracking the *Evans* holding but also by the related instruction focusing on petitioner's knowledge and intent regarding the linkage between the cash payments and official acts. See Pet. App. 26a (evidence must show that petitioner "intended to obtain property or a payment to which he was not entitled with the knowledge that the property or payment was being given in return for an official act or an exercise of his official authority in regard to legislation potentially including Breed to Breed

provisions"). Petitioner apparently renews his claim that this instruction should have required linkage between the cash payments and a "specific" official act. See Pet. 17. Judge Nelson's concurring opinion agreed the omission of the word "specific" from the instruction was "unfortunate," but concluded that petitioner had failed to bring the alleged error to the district court's attention and that the omission did not, under the circumstances of this case, amount to plain error. See Pet. App. 58a-61a; see generally Fed. R. Crim. P. 30 ("No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection."); *United States* v. *Olano*, 113 S. Ct. 1770, 1776-1779 (1993) (discussing plain error standard). That case-specific issue warrants no further review.

Contrary to petitioner's contention (Pet. 15-16), the court of appeals' conclusion regarding the adequacy of the instructions does not conflict with *United States* v. *Martinez*, 14 F.3d 543 (11th Cir. 1994), or *United States* v. *Davis*, 30 F.3d 108 (11th Cir. 1994) (per curiam). Neither of those cases ruled that the language of the *Evans* holding is insufficient to express the quid pro quo requirement. In *Martinez*, the district court entirely "failed to instruct the jury on the *quid pro quo* requirement," a fact the government conceded. 14 F.3d at 553.[2] In *Davis*, "the

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[2] The instructions defined extortion under color of official right as "the wrongful taking by a public official of money or property not due to him or his office, whether or not the taking was accomplished by force, threats or use of fear." *Martinez*, 14 F.3d at 552. Though another part of the instruc-

district court failed to charge [the] jury as to the necessity of finding an explicit promise before the jury properly could convict—and indeed informed the jury that 'a specific quid pro quo is not always necessary for a public official to be guilty of extortion.'" 30 F.3d at 109.

The Eleventh Circuit did state that "an explicit promise by a public official to act or not act is an essential element of Hobbs Act extortion, and the defendant is entitled to a reasonably clear jury instruction to that effect." 30 F.3d at 109. *Evans* holds, however, that the "explicit promise or undertaking" requirement of *McCormick*, 500 U.S. at 273, may be proved by evidence that a public official received a payment, "knowing that [it] was made in return for official acts." 112 S. Ct. at 1889; see *id.* at 1892 (Kennedy, J., concurring in part and concurring in the judgment). The statement in *Davis* did not expressly require anything more than what this Court said was sufficient in *Evans*, nor did the court in *Davis* review instructions like those at issue here.

2. Petitioner also challenges (Pet. 18-24) the sufficiency of the evidence underlying his RICO conviction. His case-specific claims were correctly rejected by the court of appeals, and warrant no further review.

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tions did use language similar to that of the *Evans* holding, it did not limit liability to *Evans*-type proof. Rather, the jury was instructed that "passive acceptance of a benefit by a public official is sufficient to form the basis of an extortion violation, if the official knows he had been offered the payment in exchange for the exercise of his official power, *or that such payment is motivated by hope of influence.*" *Ibid.* (emphasis added).

Petitioner claims (Pet. 19-21) that the evidence failed to establish a RICO "enterprise." The court of appeals articulated the correct legal standard on that point, see Pet. App. 36a (extensively quoting *United States* v. *Turkette*, 452 U.S. 576, 583 (1981), and 18 U.S.C. 1961(4)), and petitioner's only challenge is to the court's application of the standard to the facts of this case. The court of appeals correctly rejected petitioner's "conten[tion] that the 'Office of the Representative for [Kentucky] House District 14 together with the individuals employed therein' is not, in fact, an 'enterprise' within the meaning of 18 U.S.C. § 1961(4)." Pet. App. 36a. It explained that, even assuming that petitioner "was not in charge of a formal and legally cognizable entity, * * * [u]nder § 1961(4), 'associations in fact' also are deemed enterprises." *Id.* at 37a (citing *Turkette*, 452 U.S. at 583). The court endorsed the district court's factual determination that "[t]he evidence was clear that [petitioner] had several employees in his office who performed constituent service for both his constituents as Speaker of the House and his constituents as Representative of the Fourteenth District" and that "[t]hese employees performed various duties for the office which constituted the enterprise, including some of the racketeering acts." *Ibid.* These determinations do not conflict with any decision of this Court or of another court of appeals.[3]

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[3] In support of a claimed conflict, petitioner cites several cases (Pet. 20) that may be read for the legal proposition that the RICO enterprise must be an entity separate from the person charged in the RICO indictment. Nothing in the decision below conflicts with that principle; rather, the court of appeals determined, as a factual matter, that the Office of the

Petitioner also claims (Pet. 18-24) that the proof failed to show a "pattern of racketeering activity." Although other racketeering acts were charged, the jury found that petitioner had committed the predicate crimes of extortion in 1992 and mail fraud in 1988. Those predicate crimes support conviction under RICO, which defines a "pattern of racketeering activity" as "requir[ing] at least two acts of racketeering activity, one of which occurred after [October 15, 1970] and the last of which occurred within ten years * * * after the commission of a prior act of racketeering activity." 18 U.S.C. 1961(5). Again, the court of appeals articulated the correct legal standard, citing a decision of this Court for the requirement that "the government must establish not only that at least two predicate acts occurred, but also a 'relationship between the predicates' and the 'threat of continuing activity[.]'" Pet. App. 38a (citing *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989)).

Petitioner's challenges to the court of appeals' determination that the trial proof established the relationship and continuity necessary for a RICO "pattern" warrant no further review. The court correctly explained that "[t]he relationship requirement is satisfied if the predicate acts 'have the same or similar purposes, results, participants, victims, *or* methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'" Pet. App. 38a (quoting and adding emphasis to *H.J. Inc.*, 492 U.S. at 240). The court found the predicate acts in this case "sufficiently related"

Representative of Kentucky House District 14, headed by petitioner, was a RICO enterprise. Pet. App. 36a-37a.

because they "had as their purpose the use of public office for personal benefit, and they, in fact, resulted in such benefit." Pet. App. 38a. That determination does not conflict with the decision of any other court of appeals.[4] Likewise, the court of appeals correctly found it "beyond peradventure" that these acts posed a threat of continuing activity, particularly in light of petitioner's trial testimony "that he saw nothing wrong with putting campaign funds to personal use or with accepting even large amounts of money from lobbyists." *Id.* at 39a.

3. Finally, petitioner seeks review (Pet. 24-26) of the court of appeals' determination not to address the merits of his challenge to the validity of Sentencing Guidelines § 5E1.2(i), which provides for imposition of a fine to cover the expected costs of incarceration

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[4] Petitioner's primary claim of conflict is based on the court's alleged "overrul[ing]" (Pet. 22-24) of its prior decision in *Vild* v. *Visconsi*, 956 F.2d 560 (6th Cir.), cert. denied, 113 S. Ct. 99 (1992). The claimed intra-circuit conflict, even if accurate, would not justify certiorari, see *Wisniewski* v. *United States*, 353 U.S. 901, 901-902 (1957) (per curiam), and in fact no conflict exists. Judge Guy quoted his *Vild* dissent for the proposition that the use of the disjunctive in *H.J. Inc.* means that "the relatedness requirement is met if the predicate acts are the same or similar in any of the enumerated ways." Pet. App. 38a (quoting 956 F.2d at 571). The *Vild* majority did not reject that point but, on the contrary, analyzed each factor and concluded none had been satisfied under the particular facts of that case. See 956 F.2d at 566-568. The principal legal dispute in *Vild* was whether the similarity of participants in the predicate acts was sufficient to satisfy the relatedness test. See *id.* at 572 (Guy, J., dissenting). Here, however, the court of appeals did not rely on petitioner's participation in both predicate acts, but rather relied on the similarity of purpose and result. See Pet. App. 38a.

(here, $108,356). Petitioner's claim concededly was not raised in the district court, and the court of appeals held that imposition of a fine pursuant to Guidelines § 5E1.2(i) was not "plain error" reviewable for the first time on appeal. Pet. App. 56a (citing *United States* v. *Carrozza*, 4 F.3d 70, 84 (1st Cir. 1993), cert. denied, 114 S. Ct. 1644 (1994)); see also *United States* v. *Mondello*, 927 F.2d 1463, 1468 (9th Cir. 1991) (refusing to consider challenge to Guidelines fine first raised on appeal). Petitioner can show plain error only if, among other things, it was "obvious" error for the sentencing court not to invalidate Guidelines § 5E1.2(i). *United States* v. *Olano*, 113 S. Ct. at 1777-1778. In view of the case law upholding the validity of that Section, petitioner cannot satisfy the plain error standard. See *Carrozza*, 4 F.3d at 84.

Even if petitioner's challenge had been properly preserved, the issue would not warrant this Court's review. Only one federal court of appeals has invalidated Guidelines § 5E1.2(i), see *United States* v. *Spiropoulos*, 976 F.2d 155, 164-169 (3d Cir. 1992), but that court's reasoning has been specifically rejected by several other courts of appeals, at least five of which have upheld costs-of-incarceration fines imposed pursuant to Section 5E1.2(i). See *United States* v. *Watroba*, No. 93-2600, 1995 WL 82885, at * 2-4 (6th Cir. Mar. 2, 1995); *United States* v. *Orena*, 32 F.3d 704, 716-717 (2d Cir. 1994); *United States* v. *Turner*, 998 F.2d 534, 536-537 (7th Cir.), cert. denied, 114 S. Ct. 639 (1993); *United States* v. *Hagmann*, 950 F.2d 175, 186-187 (5th Cir. 1991), cert. denied, 113 S. Ct. 108 (1992); *United States* v. *Doyan*, 909 F.2d 412, 415-416 (10th Cir. 1990). Moreover, as petitioner notes (Pet. 25 n.11), Congress has now expressly articulated,

through enactment of legislation effective September 13, 1994, the Sentencing Commission's authority to require costs-of-incarceration fines. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20403(b), 108 Stat. 1825 (to be codified at 28 U.S.C. 994(y)) ("The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered."); see also § 20403(a)(2), 108 Stat. 1825 (to be codified at 18 U.S.C. 3572(a)(6)) (sentencing court imposing fine shall consider, among other things, "the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence"). The issue, therefore, has little prospective importance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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